



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Marc Erik Elias
Perkins Coie
700 Thirteenth Street, NW, Ste. 600
Washington, D.C. 20005-3960

DEC 22 2014

RE: MUR 6790
Martha Coakley
Martha Coakley for Senate Committee
Anne Gentile

Dear Mr. Elias:

On March 12, 2014, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On December 9, 2014, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe that Martha Coakley for Senate Committee and Anne Gentile in her official capacity as treasurer violated the Act with respect to alleged contributions from the Martha Coakley for Senate Committee to Coakley's state campaign committee. The Commission also voted to dismiss the allegation that Martha Coakley and Anne Gentile violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)) and the allegation that the Martha Coakley for Senate Committee and Anne Gentile in her official capacity as treasurer violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Michael Columbo, the attorney assigned to this matter at (202) 694-1341.

Sincerely,

John J. 2

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis:

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:**

Martha Coakley

6 Martha Coakley for Senate Committee and Anne
7 Gentile in her official capacity as treasurer

8 Anne Gentile

9 **I. INTRODUCTION**

10 Martha Coakley was a U.S. Senate candidate in a special general election held in
11 Massachusetts in January 2010, and Martha Coakly for Senate Committee (the "Federal
12 Committee") was her principal campaign committee. Coakley was also the elected attorney
13 general of Massachusetts and running for reelection in the 2010 general election. The Complaint
14 alleges that: (1) the Coakley Committee made impermissible contributions to Coakley's state
15 attorney general campaign committee (the "Nonfederal Committee"); (2) Coakley and Anne
16 Gentile,¹ the Federal Committee's former treasurer and Coakley's sister, violated 52 U.S.C.
17 § 30114(b) (formerly 2 U.S.C. § 439a(b)) by converting campaign funds to personal use when
18 the Federal Committee paid Gentile for unnecessary services and purchased unnecessary
19 compliance systems; and (3) the Federal Committee violated 52 U.S.C. § 30104(b) (formerly
20 2 U.S.C. § 434(b)) when it failed to itemize one disclosed credit card payment for \$3,763.10,²
21 (The Federal Committee has since itemized this payment in an amended report.) In separate

¹ Coakley, the Coakley Committee, and Gentile are collectively referred to herein as "Respondents."

² The Complaint also briefly asserts that Coakley violated the Act through "unlawful funding of advertisements and travel," which we assume refers to the advertisements promoting Coakley's campaign website. Compl. at 1. The reference to unlawful funding of travel is unexplained, but may refer to the credit card charges for a "convention" that form the basis of the third allegation addressed below.

1 Responses to the Complaint, Coakley and Gentile contend that the allegations are meritless,
2 arguing that the transfer of excess federal campaign funds to a state campaign is permissible.³

3 The Commission finds no reason to believe that the alleged contributions from the
4 Federal Committee to the Nonfederal Committee violated the Act. The Commission also
5 exercises its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985), to dismiss
6 the allegations that Coakley and Gentile converted federal campaign funds to personal use in
7 violation of 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)) and the Federal Committee
8 violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

9 **II. BACKGROUND**

10 Martha Coakley won election for a four-year term as the Massachusetts Attorney General
11 in 2006. Following the death of Senator Edward Kennedy on August 25, 2009, Massachusetts
12 held a special election to select a senator to complete the remainder of Kennedy's term. Coakley
13 won the Democratic Party's special primary election but lost the special general election to Scott
14 Brown on January 19, 2010. In November of 2010, Coakley won reelection as the
15 Massachusetts Attorney General and remains in that position today.

16 **III. ANALYSIS**

17 **A. The Federal Committee's Allegedly Unlawful Contribution to the Nonfederal**
18 **Committee**

19 The Complaint alleges that Respondents used the Federal Committee's funds to support
20 Coakley's state attorney general campaign in three ways. Compl. at 1. First, it alleges the
21 Federal Committee paid for an advertisement (Exhibit A to the Complaint) that promoted
22 Coakley's campaign website (www.marthacoakley.com), which in turn solicited contributions to

³ The Federal Committee's termination request was accepted on January 8, 2014. It did not respond to the Complaint filed on March 5, 2014.

1 her state campaign. *Id.* Second, the Complaint alleges that the Federal Committee incurred
2 \$3,763.10 in credit card charges at a time when Coakley was not seeking federal office “and had
3 stated that she was actively seeking state office,” and, based on these facts, asserts that the credit
4 card charges constituted contributions to the Nonfederal Committee. Compl. at 1-2. Third, the
5 Complaint alleges the Federal Committee paid \$35,000 to purchase financial compliance
6 software; \$10,000 to a federal campaign finance compliance consultant; and \$28,000 for
7 compliance services, even though — according to the Complaint — the Federal Committee was
8 inactive. Compl. at 2. Thus, the Complaint contends that “Coakley’s inactive [Federal]
9 Committee appears to have been noncompliant with federal reporting requirements and used
10 federal campaign funds to buy software that only brings a political benefit to her state campaign
11 committee.” *Id.*

12 The Complaint asserts that “[a]ll transfers from the federal to a state campaign of the
13 same individual are prohibited by federal law.” *Id.* To support this assertion, the Complaint
14 cites and quotes 11 C.F.R. § 110.3(d), which “prohibits all transfers from the nonfederal to a
15 federal campaign” of the same candidate. *Id.* Coakley’s Response contends that the Act does
16 not “bar transfers from a federal campaign to a state committee.” Resp. at 1.

17 The Commission has permitted contributions from a candidate’s federal committee to her
18 nonfederal committee. The Act and Commission regulations identify six categories of
19 permissible uses of contributions accepted by a federal candidate, including “for any other lawful
20 purpose.” 52 U.S.C. § 30114(a)(6) (formerly 2 U.S.C. 439a(a)(6)); 11 CFR 113.2(e). The
21 Commission has permitted, as one lawful purpose, the transfer of excess federal campaign funds
22 to a candidate’s state committee, “so long as the proposed transfer of funds from the Federal
23 campaign committee to the local campaign committee is permissible under [state] law, and

1 assuming any funds so transferred are in fact used in the candidate's local election campaign and
2 not diverted to the candidate's personal use, such a transfer would be permissible under 2 U.S.C.
3 439a." *See, e.g.*, Advisory Op. ("AO")1986-05 (Barnes for Congress Committee) (permitting
4 contribution of candidate's congressional committee funds to his state committee supporting his
5 campaign for prosecutor); *see also, e.g.*, AO 1996-52 (Andrews for Congress) at 2-4 (noting that
6 the Commission has determined that the use of excess campaign funds for future nonfederal
7 election campaigns would be a lawful purpose under section 439a); AO 1993-10 (Comite
8 Amigos Tito Colorado) (former federal candidate permitted to use excess federal campaign
9 funds to run for governor); AO 1980-113 (Zell Miller for U.S. Senate Committee) (concluding
10 that "in the absence of any [state] statute to the contrary," federal committee could "dispose of its
11 excess campaign funds by establishing a campaign fund for [the candidate's] future campaigns
12 for Federal, state or local office . . . [assuming] that the excess funds . . . are, in fact, used for
13 campaign purposes").

14 Accordingly, the Commission determines that there is no reason to believe that
15 Respondents violated the Act with respect to the alleged contributions from a candidate's federal
16 committee to her nonfederal committee.

17 **B. Coakley and Gentile's Alleged Personal Use of Campaign Funds**

18 The Complaint alleges that the Federal Committee's funds were converted to personal
19 use in violation of 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)). Specifically, it alleges
20 the Federal Committee paid \$28,000 to Anne Gentile, Coakley's sister and the Federal
21 Committee's treasurer, for compliance services even though the Federal Committee "was largely
22 inactive" and the services were "duplicative of services and systems already purchased by the
23 dormant [Federal] committee." Compl. at 1-2. Contributions may not be converted to the

1 “personal use” of any person, 52 U.S.C. § 30114(b)(1) (formerly 2 U.S.C. § 439a(b)(1));
2 11 C.F.R. § 113.1(g), that is, used “to fulfill a commitment, obligation or expense of any person
3 that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.”
4 11 C.F.R. § 113.1(g); *see also* 52 U.S.C. § 30114(b)(2) (formerly 2 U.S.C. § 439a(b)(2)). This
5 prohibition includes salary payments to a candidate’s family members, “unless the family
6 member is providing *bona fide* services to the campaign.” 11 C.F.R. § 113.1(g)(1)(i)(H).

7 Respondents generally deny the allegations, but, from the information available, it is
8 unclear whether the services provided by Gentile were *bona fide* services compensated at fair
9 market value. Coakley Resp. at 2 (characterizing the allegation as “erroneous”); Gentile Resp.
10 at 1 (adopting Coakley’s Response). Nonetheless, the Complaint rests heavily on the fact that
11 the Federal Committee “was largely inactive,” Comp. at 1-2, a fact that, even if true, does not
12 necessarily indicate the Federal Committee either received no *bona fide* services or overpaid for
13 such services. Even an inactive committee would require continued compliance and winding-
14 down services in advance of termination. Without more to suggest there was no work to be done
15 by Gentile, the Commission concludes that further enforcement action would be an inefficient
16 use of resources. Accordingly, the Commission exercises its prosecutorial discretion to dismiss
17 the allegations that that Martha Coakley or Anne Gentile violated 52 U.S.C. § 30114(b)
18 (formerly 2 U.S.C. § 439a(b)).

19 **C. The Coakley Committee’s Alleged Failure to Itemize Credit Card Purchases**

20 The Complaint also alleges that the Federal Committee violated 52 U.S.C. § 30104(b)
21 (formerly 2 U.S.C. § 434(b)) when it failed to itemize credit card purchases totaling \$3,763
22 disclosed on October 18, 2012, as “credit card payment/convention.” Compl. at 1-2. While it
23 appears that the Federal Committee initially failed to itemize this payment, the Respondents filed

1. an amended report to remedy this error before the Complaint was filed. Resp. at 2; Coakley
2. Committee Amended 2012 Year-End Report at 13-17 (Dec. 30, 2013). In light of the low
3. amount potentially in violation and because of the Committee's self-disclosure and remedial
4. action before the filing of the Complaint, the Commission dismisses this allegation pursuant to
5. its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985).